

Message Text

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ACTION DLOS-09

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-----000587 212019Z /61-S

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TO SECSTATE WASHDC PRIORITY 8736
AMEMBASSY BONN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY TOKYO
AMEMBASSY OSLO
INFO AMEMBASSY BRUSSELS
USMISSION USUN NEW YORK
AMEMBASSY OTTAWA
AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 01 OF 02 GENEVA 06103

FOR DEPUTY SECRETARY CHRISTOPHER FROM AMB. RICHARDSON

LONDON FOR AMBASSADOR BREWSTER

E.O. 11652: XGDS-3
TAGS: PLOS, ENWT, PORG, IMCO, UK
SUBJECT: LOS: UK REACTION TO US ENVIRONMENTAL PROPOSALS

SUMMARY: UK REACTION TO MAIN US LOS ENVIRONMENTAL PROPO-
SALS NEGATIVE. PARALLEL HIGH LEVEL ACTION IN WASHINGTON
AND LONDON WOULD BE HELPFUL. ALSO REQUEST APPROPRIATE
OPPORTUNITIES BE USED TO SUPPORT US ENVIRONMENTAL INITIA-
TIVE WITH OTHER MARITIME STATES. END SUMMARY.

1. FOLLOWING THE ELABORATION OF US OBJECTIVES FOR IMPROVE-
MENT OF THE ENVIRONMENTAL PROVISIONS OF THE NEGOTIATING
TEXTS BEFORE THE CONFERENCE BY A TASK FORCE COMPRISED OF
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INTERESTED CONGRESSIONAL AND AGENCY REPRESENTATIVES,
EFFORTS TO PROMOTE THESE PROPOSALS BEGAN WITH THE CONFIDENTIAL GROUP OF 5 (US, UK, FRANCE, JAPAN, USSR). (TEXT OF PROPOSALS SENT SEPTTEL.) WE ARE NOW SYSTEMATICALLY UNDERTAKING INFORMAL CONSULTATIONS WITH OTHER DELEGATIONS.

2. OUR STRATEGY HAS BEEN TO CONFINE OUR AMENDMENTS TO THE

PART OF THE TEXT DEVOTED EXCLUSIVELY TO THE MARINE ENVIRONMENT (PART XII) SO AS NOT TO REOPEN OTHER PARTS OF THE TEXT SUCH AS THE STRAITS ARTICLES. WE HAVE REPEATEDLY EMPHASIZED THAT THE FUNCTION OF A NEW LAW OF THE SEA CONVENTION IS TO PROVIDE A LONG-TERM FRAMEWORK FOR STABILIZING THE LAW OF THE SEA AND REGULATING ASSERTIONS OF NATIONAL SOVEREIGNTY, RIGHTS AND JURISDICTION IN THE OCEANS. A READING OF OUR PROPOSALS REFLECTS THIS CONCLUSION AND THE RECOGNITION OF THE PARAMOUNT ROLE OF IMCO AS THE COMPETENT INTERNATIONAL ORGANIZATION FOR THE ELABORATION OF SPECIFIC RULES AND STANDARDS RELATING TO VESSEL-SOURCE POLLUTION AND NAVIGATION WITHIN THE JURISDICTIONAL FRAMEWORK OF THE LAW OF THE SEA.

3. THE UNITED KINGDOM PLAYS A VERY INFLUENTIAL ROLE REGARDING THE POLLUTION ARTICLES BOTH WITHIN THE GROUP OF 5 AND MARITIME STATES GROUP. THEIR SUPPORT FOR OUR AMENDMENTS IS THEREFORE IMPORTANT. TO DATE THEY HAVE TAKEN A NEGATIVE ATTITUDE TOWARD REOPENING THE POLLUTION ARTICLES IN GENERAL AND OUR IMPORTANT SUBSTANTIVE AMENDMENTS IN PARTICULAR. (THEY ARE READILY COOPERATING ON COSMETIC SUGGESTIONS.) UNLESS WE CAN ACHIEVE GENERAL MARITIME SUPPORT, THERE IS NO CHANCE OF SATISFYING CONFERENCE CRITERION OF "SUBSTANTIALLY IMPROVED PROSPECT OF CONSENSUS" NECESSARY TO ALTER EXISTING TEXTS. ON THE POSITIVE SIDE, WE NOTE THAT MOST MARITIME DELEGATIONS SEEM TO HAVE

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INSTRUCTIONS TO SUPPORT FRANCE IN PRINCIPLE ON AMOCO CADIZ RELATED PROPOSALS; WE AND CANADA ARE COORDINATING WITH FRANCE.

4. ACTION REQUESTED: IT WOULD BE HELPFUL IF THE DEPUTY SECRETARY COULD MEET EARLY NEXT WEEK WITH UK AMBASSADOR JAY TO DISCUSS OUR CONCERNS IN GENERAL TERMS. IT MIGHT BE USEFUL IF BARBARA BLUM, DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, COULD BE PRESENT DURING THIS MEETING TO SUPPORT OUR POSITION, AS MANY OF OUR PROPOSALS DERIVE FROM SUGGESTIONS MADE BY HER AND SENATOR MUSKIE. AMEMBASSY LONDON HAS ALREADY OFFERED ITS COOPERATION. IN THIS REGARD, IT WOULD ALSO BE DESIRABLE FOR AMBASSADOR BREWSTER TO MAKE A PARALLEL APPROACH TO APPROPRIATELY PLACED UK OFFICIALS WHO ARE SENSITIVE TO ENVIRONMENTAL CONCERNS, AS SHIPPING INTERESTS NOW SEEM TO BE IN CONTROL. FINALLY, APPROPRIATE OPPORTUNITIES MIGHT BE USED BY OTHER POSTS TO SUPPORT US ENVIRONMENTAL INITIATIVE WITH OTHER MARITIME STATES.

5. THE FOLLOWING ARE SUGGESTED TALKING POINTS FOR USE WITH THE UK, WHICH COULD BE DRAWN UPON IN OTHER CONVERSATIONS AS

WELL:

-- I KNOW THAT YOUR EMBASSY HAS BEEN CLOSELY FOLLOWING MY EFFORTS TO ENSURE THAT OUR RECENT 200 MILE POLLUTION LEGISLATION IS APPLIED AND MODIFIED IN A MANNER CONSISTENT WITH INTERNATIONAL LAW AND OUR MUTUAL INTERESTS IN FREEDOM OF NAVIGATION.

-- MEANWHILE, SENATOR MUSKIE HAS ALSO MADE CLEAR HIS OPPOSITION TO THE TEXT ON MARINE POLLUTION BEFORE THE LAW

NOTE BY OC/T: DISSEMINATION COORDINATED WITH S/S-O, SUMMERS.

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C O N F I D E N T I A L SECTION 02 OF 02 GENEVA 06103

FOR DEPUTY SECRETARY CHRISTOPHER FROM AMB. RICHARDSON

LONDON FOR AMB. BREWSTER

OF THE SEA CONFERENCE.

-- THIS MEANS NOT ONLY THAT WE MIGHT FACE INSUPERABLE DIFFICULTIES IN ACHIEVING RATIFICATION OF AN LOS TREATY, BUT THAT WE DO NOT HAVE AT PRESENT A CREDIBLE AND POLITICALLY ACCEPTABLE INTERNATIONAL DOCUMENT TO USE IN OUR ATTEMPTS TO RESTRAIN DOMESTIC ACTION. MOREOVER, SO LONG

AS THE LOS TEXTS ARE CONSIDERED SERIOUSLY INADEQUATE, SUPPORTERS OF UNILATERAL ASSERTIONS OF JURISDICTION ARE IN A STRONGER POSITION.

-- FOR THESE REASONS, AMB. RICHARDSON DEVELOPED A PACKAGE OF AMENDMENTS TO THE LOS TEXT IN CONSULTATION WITH CONFIDENTIAL

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GRESSIONAL AIDES AND ENVIRONMENTALISTS. THAT PACKAGE REPRESENTS A VERY LIMITED SET OF CHANGES THAT WE HOPE IS SUFFICIENT TO HAVE A POSITIVE IMPACT ON DOMESTIC WILLINGNESS TO ACCEPT AND ABIDE BY REASONABLE JURISDICTIONAL LIMITATIONS THAT BOTH OF US COULD SUPPORT.

-- I AM DISTURBED BY REPORTS FROM GENEVA THAT OUR TWO DELEGATIONS, DESPITE LONG AND FRIENDLY CONVERSATIONS, HAVE BEEN UNABLE TO AGREE ON ANYTHING BUT COSMETIC AMENDMENTS. I AM ALSO DISTURBED BY REPORTS FROM LONDON THAT THE LEADER OF YOUR DELEGATION TO THE CURRENT IMCO MEETING SAID THAT THE BRITISH GOVERNMENT DID NOT THINK CHANGES IN THE LOS TEXT ON POLLUTION WERE NECESSARY. THIS POSTURE MAKES IT VERY DIFFICULT TO PERSUADE THE SOVIETS AND OTHER MARITIME COUNTRIES TO COOPERATE AT ALL.

-- IT SHOULD BE APPARENT THAT OUR PROPOSALS ARE VERY MODEST WHEN ONE CONSIDERS WHAT CAN HAPPEN IF THERE IS A FREE-FOR-ALL IN COASTAL STATE ASSERTIONS REGARDING POLLUTION IN THE 200-MILE ZONE. THIS UNDERLYING POINT SEEMS TO HAVE BEEN MISSED BY SOME OF YOUR EXPERTS. THEY DO NOT SEEM TO LOOK BEYOND THEIR TACTICAL ABILITY TO DEFEAT OUR PROPOSALS AT THE CURRENT SESSION. SHOULD THEY SUCCEED, IT WOULD CERTAINLY BE A SHORT-LIVED AND PYRRHIC VICTORY FOR NAVIGATION.

-- ACCORDINGLY, LET ME MAKE IT CLEAR THAT THERE IS NO GUARANTEE THAT THE US CONGRESS WILL ACCEPT THE IDEA THAT COASTAL STATES MAY NOT IMPOSE UNILATERAL STANDARDS DIFFERENT FROM INTERNATIONAL STANDARDS IN THE 200 MILE ZONE, MUCH AS MANY OF US IN THE ADMINISTRATION UNDERSTAND THE WISDOM OF THAT APPROACH. TO COME CLOSE TO ACHIEVING SUCH A RESULT, THE TEXT MUST BE CHANGED: (1) TO ELIMINATE
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RESTRICTIONS ON EXISTING RIGHTS OF COASTAL STATES IN THE TERRITORIAL SEA TO SET AND ENFORCE POLLUTION STANDARDS, IN PARTICULAR DISCHARGES FROM SHIPS IN INNOCENT PASSAGE, (2)

TO MAKE CLEAR THAT A VESSEL CAUGHT POLLUTING THE 200-MILE ZONE CAN BE ARRESTED AND PUNISHED BY THE COASTAL STATE WITHOUT ANY DUTY TO SUSPEND PROCEEDINGS IN FAVOR OF A FLAG STATE, AND (3) TO ENABLE US TO MAKE THE SAME KIND OF JOINT ARRANGEMENTS WITH OUR NEIGHBORS THAT YOU WOULD HAVE THE RIGHT TO MAKE WITH YOUR EUROPEAN COMMUNITY PARTNERS TO CONTROL THE CONSTRUCTION, MANNING, EQUIPMENT AND DESIGN OF VESSELS USING THE TERRITORIAL SEA EN ROUTE TO PORTS OF THE REGION.

-- WHILE I UNDERSTAND WE AT LEAST AGREE IN PRINCIPLE ON SOME ASPECTS OF THE FIRST POINT OF THE REQUIRED TEXTUAL CHANGES, OUR DELEGATION REPORTS DIFFICULTY IN ACHIEVING SUPPORT FOR CLARIFYING TEXTS. YOUR TOTAL OPPOSITION ON THE OTHER TWO POINTS HAS BEEN REPORTED.

-- WE ARE MAKING AN EARNEST EFFORT TO BUILD A POLITICALLY REALISTIC LEGAL FRAMEWORK THAT CAN PROTECT THE ENVIRONMENT FROM UNREASONABLE SHIPPING PRACTICES, AND THAT CAN PROTECT OUR NAVIGATIONAL FREEDOMS FROM THE UNDERSTANDABLY PASSIONATE REACTION TO OUTRAGEOUS POLLUTION INCIDENTS. WE HOPE YOUR DELEGATION IN GENEVA WILL BE GIVEN INSTRUCTIONS TO COOPERATE IN THE EFFORT WITHOUT DELAY, AND TO PERSUADE THE SOVIETS AND OTHER MARITIME COUNTRIES OF THE POLITICAL NEED TO PRODUCE CONCRETE RESULTS AT THIS SESSION. RICHARDSON

NOTE BY OC/T: DISSEMINATION COORDINATED WITH S/S-O, SUMMERS.

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